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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's	)	Gen. Docket No. 90-314
Rules to Establish New Personal	)	
Communications Services	)	DOCKET FILE COPY ORIGINAL
	)	
In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act -	)	
Competitive Bidding	)	

To: The Commission

**REPLY COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS  
ON PETITIONS FOR RECONSIDERATION**

American Personal Communications<sup>1/</sup> ("APC") hereby replies to CTIA's and BellSouth's<sup>2/</sup> latest anti-competitive attempts to limit the number of new PCS entrants and expand in-region cellular participation in PCS. Throughout the four-year PCS rule making proceeding, BellSouth, CTIA and other cellular incumbents have campaigned to eliminate or dilute the cellular eligibility rules so that they can acquire up to 65

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<sup>1/</sup> American PCS, L.P., d/b/a American Personal Communications, a limited partnership in which American Personal Communications, Inc. is the general managing partner and The Washington Post Company is an investor/limited partner.

<sup>2/</sup> See Comments on Further Reconsideration of Memorandum Opinion and Order, Gen. Docket 90-314, released on June 13, 1994 ("Order"), filed on August 30, 1994, by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Cellular Corp. (collectively "BellSouth"); Petition for Reconsideration, Fifth Report and Order, PP Docket No. 93-253, filed August 22, 1994, by Cellular Telecommunications Industry Association ("CTIA").

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MHz of spectrum in numerous geographic areas and foreclose potential competition. Notwithstanding that the Commission repeatedly has rejected these anti-competitive proposals, some cellular incumbents continue to wage this campaign in the PCS docket (Gen. Docket No. 90-314) as well as in the competitive bidding docket (PP Docket No. 93-253) where the issues are outside the scope of the proceeding.<sup>3/</sup> Throughout this vigorous and multi-faceted crusade, no cellular incumbent -- including CTIA or BellSouth -- has demonstrated that enhancing in-region cellular participation in PCS is consistent with the Commission's rules and policies or the public interest. Therefore, their demands should be denied.

Cellular incumbents will have an unprecedented opportunity to participate in PCS in the United States. Unlike the case in all other countries to date -- which have flatly prohibited any cellular participation at all on grounds of fostering competition -- U.S. cellular carriers can bid for PCS licenses without restriction in areas where they do not have significant cellular holdings and can acquire 10 MHz of PCS spectrum in their existing cellular service areas.

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<sup>3/</sup> CTIA urges the Commission to amend the rules so that incumbent cellular carriers can acquire more PCS spectrum in the auctions and secondary markets. CTIA Petition at 2-4, 8-10. APC already has responded at length to CTIA's proposals for expanded in-region cellular participation in PCS. See APC Comments on Petitions for Reconsideration, Gen. Docket No. 90-314, filed August 30, 1994 ("APC Comments"). Since these issues are outside the scope of the competitive bidding proceeding, these aspects of CTIA's petition should be dismissed on procedural as well as on substantive grounds.

BellSouth, like the other cellular incumbents, fails to provide any justification for departing from the Commission's pro-competitive PCS regulatory regime. Instead, it erroneously asserts that the entrepreneurs' blocks (one 30 MHz BTA block and one 10 MHz BTA block) will "fully achieve[]" the Commission's goal of "maximizing the number of new viable and vigorous competitors". BellSouth Comments at 7 (citation omitted). The entrepreneurs' blocks, however, have a more limited purpose -- mandated by Congress -- of ensuring that small businesses, rural telephone companies, and woman- and minority-owned businesses can participate in the PCS industry.<sup>4/</sup> They do not preserve opportunities for the numerous potential independent PCS entrants that will not qualify to bid on the entrepreneurs' blocks but will provide necessary direct competition to cellular incumbents. Nor do the 30 MHz and 10 MHz BTA entrepreneurs' blocks provide licensees with the same wide-area coverage that cellular operators could obtain by aggregating 30 MHz MTA licenses, 10 MHz BTA licenses, and their existing cellular service areas. Therefore, the entrepreneurs' blocks provide no basis for

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<sup>4/</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253, adopted June 29, 1994, released July 15, 1994, at ¶ 93 (citing 47 U.S.C. § 309(j)(4)(D)).

eliminating or diluting the cellular eligibility restrictions.<sup>5/</sup>

Similarly, the results of the nationwide narrowband PCS auctions do not support a dilution or elimination of the cellular eligibility rules. To the contrary, these auctions demonstrate that cellular eligibility restrictions are needed to increase the number of new and independent PCS competitors. Furthermore, the PCS service rules are not intended to maximize revenues for the federal government, but rather to promote "competitive delivery, a diverse array of services, rapid deployment, and wide-area coverage."<sup>6/</sup> Order at ¶ 4. The cellular eligibility rules ensure that new entrants -- many of whom have already devoted substantial resources toward developing PCS business plans and operations -- will have the opportunity to provide competitive and diverse services. Allowing cellular companies to foreclose these opportunities by acquiring more than 10 MHz of PCS spectrum in their existing service areas will undermine the Commission's goals.

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<sup>5/</sup> BellSouth's proposal would not preclude cellular operators from successfully bidding on more than 10% of the available 30 MHz MTA licenses and 10 MHz BTA licenses. As a consequence, cellular operators would have more opportunity than their entrepreneurs' block competitors to create regional and nationwide PCS services within the PCS spectrum, even ignoring their huge existing stake in clear cellular spectrum.

<sup>6/</sup> As BellSouth readily admits, the competitive bidding rules are not based solely or predominantly on the expectation of maximizing federal revenues. BellSouth Comments at 13 n.21. BellSouth fails to show that expanding cellular in-region participation in PCS is consistent with the goals underlying the Commission's competitive bidding authority.

Finally, BellSouth incorrectly asserts that the changes proposed by CTIA and Comcast are "relatively minimal". BellSouth Comments at 4. To the contrary, APC's market study proves that diluting the cellular attribution and overlap rules will allow cellular incumbents to control up to 65 MHz of spectrum in numerous areas and adversely affect consumer welfare. APC Comments at 2-11. Additionally, APC's comments show that the 35 MHz cellular spectrum cap and the post-auction divestiture restrictions are necessary to compensate for the cellular industry's decade-long headstart. Therefore, CTIA's and Comcast's proposals would seriously disrupt the Commission's equitable balance between allowing in-region cellular participation in PCS and providing opportunities for new, competitive and independent PCS entrants.<sup>2/</sup>

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The cellular industry is rapidly consolidating control over the wireless telecommunications market -- in the past year alone, cellular subscribership has grown 48 percent,

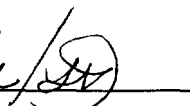
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<sup>2/</sup> APC also supports the Commission's "bright-line" cellular and PCS attribution standards that do not distinguish between equity and voting interests. The "bright-line" test will expedite the PCS licensing process by reducing the potential for petitions to deny, lengthy administrative hearings and other actions concerning PCS ownership structures. BellSouth Comments at 30-32.

to nearly 20 million U.S. subscribers.<sup>8/</sup> The last thing the Commission should do is turn the splendid opportunity for a new and competitive PCS industry into just an expansion opportunity for already dominant cellular providers. For all the foregoing reasons, the Commission should deny the proposals of CTIA, Comcast and BellSouth -- in the PCS rulemaking and competitive bidding dockets -- to the extent they would eliminate or dilute the cellular eligibility rules and expand in-region cellular participation in PCS to the detriment of American consumers.

Respectfully submitted,

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<sup>8/</sup> See CTIA Issues Six-Month Industry Report; Record Growth Indicated, Washington Telecom Week, Sept. 9, 1994, at 7; Cellular Powers Ahead, Reaching Record Numbers in Users, Revenues, Communications Daily, Sept. 7, 1994 at 1-2.

**CERTIFICATE OF SERVICE**

I, Scott W. Schelle, certify that on this 9th day of September, 1994, I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing "Reply Comments of American Personal Communications on Petitions for Reconsideration" to the following:

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